



**Legal Department**

Matt Cohn  
Legal Enforcement Program  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

March 15, 2011

Subject to FRE 408 – Confidential Settlement Discussions

Dear Mr. Cohn:

Thank you for your letter dated February 17, 2011 in which you outline a proposal developed as a result of discussions that occurred in your Denver offices on February 9, 2011. We agree the meeting was extremely helpful. We especially appreciate the creative efforts of your leadership and negotiating teams in responding to Park City's interests and concerns and working to try to bring the parties together on the major issues presented by the negotiations. We believe the time and effort is well spent, as the negotiations may lead to an effective approach to resolving environmental problems resulting from historic mining activities in our community. Protecting the health of Park City residents and visitors and of our natural environment is one of the highest priorities of our leadership and community.

We have considered the proposal outlined in the February 17, 2011 letter ("February 17 Proposal") and have prepared the following response and alternative, or counter, proposal ("Counter Proposal"). In general, Park City proposes that Park City will agree to a waiver of environmental contaminant claims against UPCM that are associated with the sites in the upper watershed on which EPA performs removal assessments and the Judge Tunnel if (1) the covenants are mutual (UPCM agrees to waive such claims against Park City), (2) there is no tipping fee for Park City CERCLA waste from OUs 3 and 4 and (3) Park City is not required to reimburse UPCM for 10% of its response costs at OU3. The waiver would relate to claims arising out of or relating to the release of "Waste Material" to water quality discharged from the Judge Tunnel and to the quality of such water as it currently exists; it would not extend to substantial new releases or discharges of "Waste Material" by UPCM after the effective date of a

Settlement Agreement. Additionally, Park City will agree that any remainder in the OU4 Trust Fund may be transferred to UPCM's OU3 response. We are prepared to offer specific language on these provisions.

Park City's Counter Proposal was developed and is offered in consideration of the following:

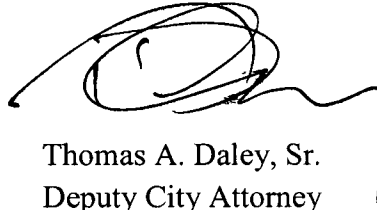
- The February 17 Proposal requires Park City to waive environmental contaminant claims against UPCM not only at OU3, OU4 but also related to the Upper Silver Creek watershed, including Judge Tunnel. The offer by EPA to subsidize the cleanup work at OU3 by \$1 million is appreciated, but this additional work benefits Park City a mere \$100,000, which is inadequate consideration for an upper watershed waiver of environmental contaminant claims against UPCM, particularly as that waiver would relate to Judge Tunnel water quality.
- The February 17 Proposal to perform removal assessment of additional mining sites, known as the Innovative Assessment sites, in the upper watershed is appreciated and is necessary for Park City to accept a mutual covenant not to sue for environmental contamination at those sites. We look forward to coordinating with EPA as those assessments are planned, conducted and reported. As the interested local government, Park City requests EPA consultation on those removal assessments, in addition to any subsequent removal action.
- Prior to the February 9, 2011 Denver meeting, Park City and its residents and landowners were offered a \$10 tipping fee only for "Development Waste" to UPCM. The February 17 Proposal adds the additional requirement for Park City to pay a \$10 tipping fee for Park City's CERCLA waste from the OU3 and, as applicable, OU4 cleanups. This requirement would be in addition to the requirement that Park City pay 10% of all of UPCM's response costs at OU3, which would include operating and closing the repository, if there is a repository. The February 17 Proposal would require Park City to pay significantly more for both the OU3 and OU4 responses than the previous proposal and requires the additional covenant not to sue UPCM.
- Prior to the Denver meeting, UPCM was required to reimburse 20% of Park City's response costs at OU4, including mechanical treatment costs, if mechanical treatment is necessary. The February 17, 2011 proposal would require Park City to pay the Development Waste tipping fee to a third party trust for the benefit of the cleanup at OU4 in place of the previous requirement for UPCM to pay Park City 20% of OU4 response costs. If OU4 requires mechanical treatment, Park City will pay significantly more than 80% of the cleanup at OU4.
- This Counter Proposal recognizes:
  - UPCM previously agreed Park City would be allowed to use the repository at OU1 for mine waste soils excavated in Park City's residential and business districts and Park City set its course for the future based on this agreement.

- UPCM and its predecessors are responsible for the vast majority of the mining and milling that occurred in Park City. These activities generated the mine waste contaminants in Park City and the East Canyon and Silver Creek watersheds. We believe UPCM has a duty to provide repository space for mine waste excavated in our community that requires disposal in order to ensure the health of our community is protected.
- Park City estimates it will spend \$10-15 million in capital costs to comply with the Safe Drinking Water and Clean Water Acts at Judge Tunnel. Park City would take full responsibility for these capital costs and anticipates the need to impose significant increases to water rates to cover these costs.
- Park City estimates it will also incur perpetual additional annual operation and maintenance costs in the “six figure” range to maintain compliance with the Safe Drinking Water and Clean Water Acts at Judge Tunnel.
- Park City will take, essentially, sole responsibility for OU4 (recognizing that the Development Waste tipping fee will be deposited in trust for the OU4 response). This could include an additional annual operating and maintenance cost in the “six figures” if mechanical water treatment is necessary.
- Park City remains willing to donate the Pace parcels, valued at \$1.9 million, for a second Richardson Flat repository, which is necessary to accomplish an effective and comprehensive Silver Creek cleanup.

Our proposal is fair, comprehensive, uncomplicated and protective of our community and the environment. We look forward to reaching an accord with UPCM on these major issues and continuing negotiations on the other aspects of the proposed Settlement Agreement. In particular, as you know, Park City expressed serious concerns about the proposed provision regarding communications relating to the data gathered in the course of the response. It also will be necessary to resolve that issue and it is our understanding that you have asked UPCM to draft appropriate language to do so.

Sincerely,

**PARK CITY MUNICIPAL CORPORATION**



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